

REMARKS

Initially, applicant would like to thank Examiner Tawfik for granting an interview and for his time spent in the interview.

Claims 1-27, 49 and 50 are pending in the application.

Applicant notes with appreciation the indication of allowable subject matter in claims 2-5,7, 17, 18 and 22-27.

Claims 1, 6, 8-16, 19-21, 49 and 50 are rejected as unpatentable over FUKUDA 5,279,098. This rejection is respectfully traversed.

Claim 1 recites transverse sealing jaws that are movable in a vertical plane perpendicular to a front side of the machine. Claim 1 also recites first longitudinal sealing means that are positioned at a first side, at one lateral side of the form-fill tube as considered from the front side of the machine.

As pointed out at the interview, claim 1 as recited provides a basis for "front side" and "lateral side" so that the relative positions of the recited elements are readily ascertainable. As further pointed out at the interview, the FUKADA reference neither discloses the recited relative positions of the elements nor would the relative positions be inherent in the FUKADA reference.

By way of further explanation, a first drawing sheet for explanatory purposes only is submitted herewith to clarify the positional relationship of the recited elements.

As seen in the first explanatory sheet, the transverse sealing jaws 34 are movable in a vertical plane T. Plane T is perpendicular to the front side of the machine (as seen by the intersection of the dashed line indicating the plane T and the dashed line indicating the front side).

As further seen in the first explanatory sheet, the longitudinal sealing means (22, 23, 23a) are positioned at a first side (left-hand side), a lateral side of tube 14 as considered from the front side.

In contrast, as pointed out at the interview, the heater belt 102 of FUKUDA (indicated in the Official Action as a longitudinal sealing means) is at the front of the tube, not at a lateral side of the tube. A second sheet for explanatory purposes only is submitted herewith clarifying the relative position of the elements of FUKUDA.

As seen in the second explanatory sheet (Fukuda - A), the movement of the transverse jaws 40 is indicated at the bottom left hand side of the sheet. To meet the limitation of "transverse sealing jaws that are movable in a vertical plane perpendicular to a front side of the machine", the front side must be as indicated in Fukuda (A). This limitation necessarily places the heater belt 102, 205 (longitudinal sealing means) on the front side of the tube, not at a lateral side of the tube with respect to the front side as recited.

Fukuda (B) is also included on the second explanatory sheet and shows that the recited front side is defined with sufficient specificity so that the term "front side" is not an arbitrary designation that could be changed to meet the recited limitations.

As seen in Fukuda (B), by indicating the right hand side of the page as the "front side", the vertical plane of movement of the transverse sealing jaws would be parallel to the "front side", not perpendicular as recited.

Based on the above, one of ordinary skill in the art would understand that the recited longitudinal sealing means are on a lateral side of the forming tube and that the heater belt 102 (longitudinal sealing means) of FUKUDA must be on a front side of the forming tube such that FUKUDA does not teach that which is recited.

Moreover, as pointed out at the interview, the heater belt of FUKUDA would not inherently be on a lateral side of the forming tube as suggested in the Official Action.

The Federal Circuit has held "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not

sufficient.'" *In re Robertson*, F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

As set forth above, FUKUDA teaches the heater belt on the front side of the forming tube. Therefore, the heater belt of FUKUDA would neither necessarily be on a lateral side of the forming tube nor would one of ordinary skill recognize that the heater belt is necessarily on the lateral side. Accordingly, inherency has not been established.

In view of the above, reconsideration and withdrawal of the rejection as to claim 1 are respectfully requested. Claims 6 and 8-16 depend from claim 1 and further define the invention and are also believed patentable over the cited prior art.

In addition, claim 6 depends from allowable claim 2 and should be allowable at least for the same reasons that claim 2 is allowable.

Claim 15 provides that the fill tube has a substantially rectangular cross-section. FUKUDA refers to a loading cylinder at column 1, lines 25-30. Even taking into account the modifier "substantially" as modifying the recited tube to less than rectangular, one of ordinary skill in the art would not characterize cylindrical as substantially rectangular.

Claim 16 provides that a first side of the fill tube has a flat surface. The cylindrical tube of FUKADA would by definition not have a flat surface. The term "flat" is defined as having a surface without a slope, tilt, or curvature. The

American Heritage® Dictionary of the English Language, Fourth Edition.

Independent claim 19 also recites a first longitudinal sealing means positioned near a first lateral side, at one lateral side of the form tube, as considered from the front side of the machine. The analysis above regarding claim 1 is equally applicable to claim 19. Claims 20 and 21 depend from claim 19 and further define the invention and are also patentable over FUKUDA.

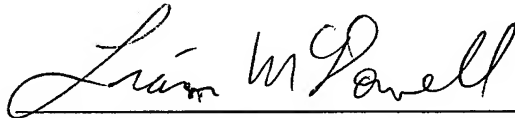
Claims 49 and 50 depend from claim 1 and further define the invention and are also believed patentable over the cited prior art. In addition, claim 50 provides that the machine is a step-wise or discontinuously operative machine. Column 1, lines 47-50 of FUKUDA teach that the machine of FUKUDA is continuously operable. FUKUDA does not teach or suggest a step-wise or discontinuously operative machine.

In view of the foregoing remarks, it is believed that the present application is in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

A handwritten signature in cursive script, reading "Liam McDowell", is written over a horizontal line.

Liam McDowell, Reg. No. 44,231
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

LM/lk

Appendix:

The Appendix includes the following item:

- two explanatory sheets